

BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: September 21, 2005

Division: Public Safety

Bulk Item: Yes X No

Department: Florida Keys Marathon Airport

Staff Contact: James R. "Reggie" Paros

AGENDA ITEM WORDING: Approval of Amendment to Lease Agreement with Grantair Service, Inc., Fixed Base Operator (FBO), at Florida Keys Marathon Airport

ITEM BACKGROUND: The attached amendment replaces all previous amendments made to the Grantair Service, Inc. agreement and extends the term of the original agreement an additional ten (10) years, provided Grantair Service constructs a corporate hangar prior to April 9, 2008.

PREVIOUS RELEVANT BOCC ACTION: On March 11, 1998, Board approved execution of Fixed Base Operation agreement with Grantair Service, Inc., pending final review by County Attorney. Amendments to the original agreement were approved June 21, 2001, September 19, 2001, July 17, 2002, September 18, 2002 and March 17, 2004; all of which have been rescinded or incorporated into the attached Lease Amendment.

CONTRACT/AGREEMENT CHANGES:

See Item Background

STAFF RECOMMENDATIONS: Approval

TOTAL COST: N/A

BUDGETED: Yes No

COST TO COUNTY:

SOURCE OF FUNDS:

REVENUE PRODUCING: Yes X No

AMOUNT PER YEAR \$45,000 per year for
entire leasehold, plus
percentage of fuel flow

APPROVED BY: County Atty YES OMB/Purchasing YES Risk Management YES

DIVISION DIRECTOR APPROVAL:

James R. "Reggie" Paros 9/6/2005

DOCUMENTATION: Included X Not Required

DISPOSITION:

AGENDA ITEM #

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract # _____
 Contract with: Grantair Service, Inc. Effective Date: 10/1/2005
 Expiration Date: 9/30/2015
 Contract Purpose/Description: FBO
 Contract Manager: Pedro Mercado 3173 County Attorney #7
 (Name) (Ext.) (Department)
 for BOCC meeting on September 21, 2005 Agenda Deadline: September 5, 2005

CONTRACT COSTS

Total Dollar Value of Contract: \$245.70/mo Current Year Portion: \$2,948.40
 Budgeted? Yes ☐ No ☐ Account Codes: _____
 Grant: \$ _____
 County Match: \$ _____

ADDITIONAL COSTS

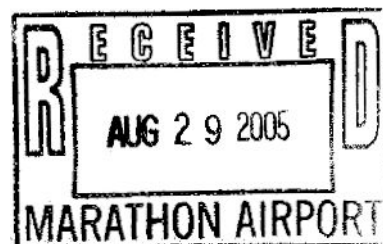
Estimated Ongoing Costs: \$ _____/yr For: _____
 (Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW

	Date In	Changes Needed	Reviewer	Date Out
Division Director	<u>9/6/05</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>9/6/05</u>
Risk Management	<u>8-24-05</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>8-24-05</u>
O.M.B./Purchasing	_____	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>8/30/05</u>
County Attorney	_____	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>Approved</u>	_____

Comments: _____

OMB Form Revised 9/11/95 MCP #2



SIXTH AMENDMENT TO MARATHON FIXED BASE OPERATOR (FBO) AGREEMENT
WITH GRANTAIR SERVICE, INC.

THIS SIXTH AMENDMENT (hereinafter "Amendment") to the Marathon Fixed Base Operator (FBO) agreement (hereinafter "agreement") is made and entered into this _____ day of _____, 2005, by and between MONROE COUNTY, a political subdivision of the State of Florida (hereinafter "County"), and GRANTAIR SERVICE, INC., a corporation of the State of Florida, (hereinafter "FBO" or "Grantair").

WITNESSETH

WHEREAS, on the 10th day of April, 1998, the parties entered into the Agreement for a period of twenty 20 years, which agreement was amended on June 21, 2001, September 19, 2001, July 17, 2002, September 18, 2002 and March 17, 2004 to provide Fixed Base Operations at the Marathon Airport; and

WHEREAS, the parties desire to extend the original term by an additional 10 years provided that Grantair constructs a new corporate hangar; and

WHEREAS, pursuant to the Agreement, the County leased certain real property at the Marathon Airport to Grantair and, pursuant to this amendment, leases additional property to Grantair, all of which property is hereinafter called the "Leased Premises"; and

WHEREAS, Grantair desires to continue to lease the property described in the agreement and this amendment;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth below, the parties agree to amend the original lease as follows:

1. This amendment rescinds any and all prior amendments to the Agreement between the County and Grantair in their entirety including those dated March 17, 2004, September 18, 2002, July 17, 2002, September 19, 2001, and June 21, 2001.
2. Paragraph 1) of the original lease is amended by adding the following paragraphs:

1.1) The County leases to the FBO an additional area of real property as described in exhibit A1a, having the dimensions of 240' x 105' and abutting the west side of the current leased area. Exhibit A1a is attached and incorporated herein by reference. This 240' x 105' real property may be used for the site of a County approved newly constructed 11,800(approximately) square foot corporate hangar, aircraft tiedowns and aviation activity only.

The new 11,800 square foot corporate hangar and/or other improvements are to be built at the sole cost and expense of the FBO. Any improvements, including the proposed new hangar, made by the FBO to the Leased Premises automatically become the property of the County upon termination of the Agreement with no compensation from the County to the FBO.

The rental payments by the FBO for the area described in exhibit A1a shall commence on April 1, 2005. Payment shall be based on the rate of Eleven and seven tenths cents (\$.117) per square foot per year, payable in advance, at Two Hundred Forty-five and 70/100 Dollars (\$245.70) per month plus applicable sales tax or Two Thousand Nine Hundred Forty-eight and 40/100 Dollars (\$2948.40) per

year plus applicable sales tax, subject to increase in amount as provided by the formula in the agreement in paragraph 3d.

1.2) The County leases to the FBO an additional area of real property having the dimensions of 240' x 235' and abutting the west side of the current leased ramp area as described in Exhibit A2. Exhibit A2 is attached and incorporated herein by reference. This 240' x 235' real property shall be used for aircraft tiedown and taxiing only. Possession of the real property described in exhibit A2 begins on October 1, 2002 and ends pursuant to paragraph 4. The rent for this real property begins the first day the property receives a certificate of occupancy (CO). Payment shall be based on the rate of Thirty-three and one tenth cents (\$.331) per square foot per year. Rent is payable in advance in the amount of One Thousand Five Hundred Fifty-six and 43/100 Dollars (\$1,556.43) per month plus applicable sales tax or Eighteen Thousand Six Hundred Seventy Seven and 16/100 Dollars (\$18,677.16) per year plus applicable sales tax, subject to an increase in amount as provided by the formula in paragraph 3d of the Agreement.

3. Paragraph 3) of the original lease is amended by revising the following subparagraph to read as follows:

c) Starting on the date that the FBO begins the sale of fuel, the FBO must pay the County a 4 cents per gallon flowage fee for each gallon of Avgas fuel sold and a 6 cents per gallon flowage fee for each gallon of Jet A fuel sold. By the tenth of each month the FBO must truthfully and accurately report to the County the number of gallons sold and pay the county the fee due based on that number. The FBO shall maintain all books, records, and documents directly pertinent to performance under this agreement in accordance with generally accepted accounting principles consistently applied. Each party to this agreement or their authorized representatives shall have reasonable and timely access to such records of each other party to this agreement for public records purposes during the term of the agreement and for four (4) years following the termination of this agreement. The County, acting through its Finance Director or other authorized representative, shall have the right to inspect and audit the FBO's books of accounts and other records directly generated at the Florida Keys Marathon Airport facility or otherwise pertaining to this agreement. Knowingly furnishing the County a false statement of its monthly fuel flowage under the provision hereof will constitute a default by the FBO of this agreement and the County may, at its option, declare this lease terminated. The FBO retains the right to have its controller or a representative assigned by its controller to be present during any inspection or audit by the County. Ten (10) business days notice must be given of intent to audit by the County to allow the FBO's controller sufficient time to schedule the audit.

4. Paragraph 3) of the original lease is amended by revising the following subparagraph to read as follows:

d) Subject to the provisions of paragraph 3g) the rent will be adjusted annually on the anniversary of the effective date of this agreement by the greater of the amount recommended in an approved rates and charges study or by the percentage in increase in the CPI (U.S. Department of Commerce price index for all urban consumers) during the year prior to the anniversary date.

5. Paragraph 3) of the original lease is amended by adding the following subparagraphs:

g) Beginning with the April 2018 monthly rental cycle, all improvements on the leasehold, except for the newly constructed corporate hangar, shall be appraised at fair market rental rate. The appraised fair market rental rate shall then become the rental rate for the leasehold. Thereafter, the rent will be adjusted annually pursuant to paragraph 3d).

h) NONPAYMENT OF ANY PORTION OF THE RENT WILL BE DEEMED TO BE A DEFAULT AND THE COUNTY MAY TERMINATE THE AGREEMENT PURSUANT TO PARAGRAPH 19.

6. Paragraph 4) of the original lease is amended by adding the following subparagraphs;

a) The term of this agreement shall be extended an additional 10 years and terminate on April 9, 2028 if Grantair completes construction and obtains a Certificate of Occupancy for an 11,800(approximately) square foot hangar prior to April 9, 2008.

b) If Grantair does not complete construction or does not obtain a Certificate of Occupancy by April 9, 2008 the original term will remain in force and this lease shall terminate on April 9, 2018.

7. Paragraph 10) of the original lease is amended by revising the following paragraph to read as follows:

10) Notwithstanding any minimum insurance requirements prescribed elsewhere in this agreement, Grantair shall defend, indemnify and hold the County and the County's elected and appointed officers and employees harmless from and against (i) any claims, actions or causes of action, (ii) any litigation, administrative proceedings, appellate proceedings, or other proceedings relating to any type of injury (including death), loss, damage, fine, penalty or business interruption, and (iii) any costs or expenses (including, without limitation, costs of remediation and costs of additional security measures that the Federal Aviation Administration, the Transportation Security Administration or any other governmental agency requires by reason of, or in connection with a violation of any federal law or regulation, attorney's fees and costs, court costs, fines and penalties) that may be asserted against, initiated with respect to, or sustained by, any indemnified party by reason of, or in connection with, (A) any activity of Grantair or any of its employees, agents, contractors or other invitees during the term of this lease, (B) the negligence or willful misconduct of Grantair or any of its employees, agents, contractors or other invitees, or (C) Grantair's default in respect of any of the obligations that it undertakes under the terms of this lease, except to the extent the claims, actions, causes of action, litigation, proceedings, costs or expenses arise from the intentional or sole negligent acts or omissions of the County or any of its employees, agents, contractors or invitees (other than Grantair). Insofar as the claims, actions, causes of action, litigation, proceedings, costs or expenses relate to events or circumstances that occur during the term of this lease, this Section will survive the expiration of the term of this lease or any earlier termination of this lease.

8. Paragraph 12) of the original lease is amended by revising the following subparagraph to read as follows:

b) The FBO must keep in full force and effect the insurance described in Exhibit E during the term of this agreement. If the insurance policies originally purchased which meet the requirements of Exhibit E are cancelled, terminated or reduced in coverage then the FBO must immediately substitute complying policies so that no gap in coverage occurs.

9. Paragraph 15) of the original lease is amended by revising the following subparagraph to read as follows:

c) That the FBO shall use the premises in compliance with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685 -1686), which prohibits discrimination on the basis of sex; 3) Section

504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975; as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as may be amended from time to time, relating to nondiscrimination based on disability; 10) Secs. 13-101, et seq., Monroe County Code, relating to discrimination based on race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identify or expression, familial status or age; 11) Any other nondiscrimination provisions in any Federal or State statutes which may apply to the parties to, or the subject matter of, this agreement. The FBO expressly understands that upon a determination by a court of competent jurisdiction that the FBO has discriminated against any person, this agreement automatically terminates without any further action on the part of any party, effective the date of the Court order.

10. Paragraph 20) of the original lease is amended by deleting subparagraph f) and the language immediately following subparagraph f) in its entirety.

11. Paragraph 20) of the original lease is amended by adding the following language immediately after subparagraph e):

The grounds for the FBO's termination of this agreement as stated in subparagraphs 20(a)-(e) create no basis for any County liability to the FBO and cannot serve to create any obligation on the part of the county to pay money to the FBO.

12. Paragraph 26) of the original lease is amended by revising the paragraph to read as follows:

26) a) This agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed entirely in the State. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this agreement, the County and Grantair agree that venue will lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida.

b) The County and Grantair agree that, in the event of conflicting interpretations of the terms or a term of this agreement by or between any of them the issue shall be submitted to mediation prior to the institution of any other administrative or legal proceeding.

c) If any term, covenant, condition or provision of this agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this agreement, shall not be affected thereby; and each remaining term, covenant, condition and provision of this agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this agreement would prevent the accomplishment of the original intent of this agreement. The County and Grantair agree to reform the agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

d) The County and Grantair agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this agreement, the prevailing party shall be entitled to reasonable attorney's fees, court costs, investigative and out-of-pocket expenses, as an award against the non-prevailing party, and shall include attorney's fees, court costs, investigative, and out-of-pocket expenses in appellate proceedings. Mediation proceedings initiated and conducted pursuant to this agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the Circuit Court of Monroe County.

13. The original lease is amended by adding the following paragraphs:

31) Grantair has the right during the term hereof, at its own expense, at any time from time to time, to install, maintain, operate, repair and replace any and all trade fixtures and other Airport personal property useful from time to time in connection with its operation on the Airport, all of which shall be and remain the property of Grantair and may be removed by Grantair prior to or within a reasonable time after expiration of the term of this agreement; provided, however, that Grantair shall repair any damage to the premises caused by such removal. The failure to remove trade fixtures or other personal property shall not constitute Grantair a hold over, but all such property not removed within ten (10) days after Grantair receives a written demand for such removal shall be deemed abandoned and thereupon shall become the sole property of the Airport.

32) Each party represents and warrants to the other that the execution, delivery and performance of this Agreement have been duly authorized by all necessary County and corporate action, as required by law.

33) The FBO and the County agree that each shall be, and is, empowered to apply for, seek, and obtain federal and state funds to further the purpose of this Agreement; provided that all applications, requests, grant proposals, and funding solicitations shall be approved by each party prior to submission.

34) The FBO and the County agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If no resolution can be agreed upon within 30 days after the first meet and confer session, the issue or issues shall be discussed at a public meeting of the Board of County Commissioners. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law. This paragraph does not apply where a default has occurred under the provisions of this agreement.

35) In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, the FBO and the County agree to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of the services under this Agreement. The FBO and the County specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

36) The FBO and the County covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this Agreement, and that the only interest of each is to perform and receive benefits as recited in this Agreement.

37) The County agrees that officers and employees of the County recognize and will be required to comply with the standards of conduct for public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

38) The County and the FBO warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of the provision, the Contractor agrees that the County shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

39) The County and the FBO shall allow and permit reasonable access to, and inspection of, all documents, papers, letters or other materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the County and the FBO in conjunction with this Agreement; and the County shall have the right to unilaterally cancel this Agreement upon violation of this provision by the FBO.

40) Notwithstanding the provisions of Sec. 768.28, Florida Statutes, the participation of the County and the FBO in this Agreement, and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the County be required to contain any provision for waiver.

41) All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of the County, when performing their respective functions under this Agreement within the territorial limits of the County shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, volunteers, or employees outside the territorial limits of the County.

42) This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of the County, except to the extent permitted by the Florida constitution, state statute, and case law

43) No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the County and the Contractor agree that neither the County nor the Contractor or any agent, officer, or employee of either shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

44) The FBO agrees to execute such documents as the County may reasonably require, to include a Public Entity Crime Statement, an Ethics Statement, and a Drug-Free Workplace Statement.

45) No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of Monroe County in his or her individual capacity, and no member, officer, agent or employee of Monroe County shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

46) This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

47) The Federal Transportation Security Administration is the federal agency primarily responsible for overseeing the security measures utilized by the airport owner pursuant to the relevant provisions of Chapter 49, United States Code, and regulations adopted under the authority of the Code, including but not limited to 49 CFR 1540, et seq. Violations of the statutes or regulations may result in severe civil monetary penalties being assessed against the airport operator. It is the intent of the airport operator that the burdens and consequences of any security violations imposed upon the airport operator as a result of actions by an airport tenant or the airport tenant's employees, agents, invitees, or licensees shall be borne by the airport tenant.

a) Airport Tenant Defined. An airport tenant means any person, entity, organization, partnership, corporation, or other legal association that has an agreement with the airport operator to conduct business on airport property. The term also includes an airport tenant as defined in 49 CFR 1540.5. Each signatory to this agreement, other than the airport operator, is an airport tenant.

b) Airport Operator Defined. As used in this agreement, airport operator means Monroe County, Florida, its elected and appointed officers, and its employees.

c) Airport Property Defined. Airport property shall mean the property owned or leased by, or being lawfully used by, the airport operator for civil aviation and airport-related purposes. For purposes of this agreement, airport property is the property generally referred to as the Key West International Airport, the Florida Keys Marathon Airport, or both as may be set forth in this agreement.

d) The airport tenant agrees to allow Transportation Security Administration (TSA) authorized personnel, at any time or any place, to make inspections or tests, including copying records, to determine compliance of the airport operator or airport tenant with the applicable security requirements of Chapter 49, United States Code, and 49 CFR 1540, et seq.

e) The airport tenant agrees to become familiar, to the extent permitted by the airport operator, with the Airport Security Program promulgated by the airport operator and approved by TSA, and also agrees to conform its' operations and business activities to the requirements of the Airport Security Program.

f) If permitted under TSA regulations, the airport tenant may voluntarily undertake to maintain an Airport Tenant Security Program as referred to in 49 CFR 1542.113. If the airport tenant voluntarily promulgates an Airport Tenant Security Program that is approved by TSA, such program,

as may be amended and approved from time to time, shall be automatically incorporated into this agreement.

g) Should TSA determine that the airport tenant or one or more of the airport tenant's employees, agents, invitees, or licensees has committed an act or omitted to act as required, and such act or omission is a violation which results in TSA imposing a civil penalty against the airport operator in accordance with TSA's Enforcement Sanction Guidance Policy, such determination and imposition of a civil penalty by TSA shall be considered a significant breach of this agreement.

(1) Minimum Violation. If the violation is the first or second violation attributed to the airport tenant and is a civil penalty "minimum violation" as provided for in TSA's Enforcement Sanction Guidance Policy, the airport tenant may cure the breach by paying to the airport operator the total costs incurred by the airport operator, including any fines or penalties imposed, in investigating, defending, mitigating, compromising, or taking of remedial measures as may be agreed to by TSA, to include but not be limited to reasonable attorney's fees and costs incurred in the investigation, defense, compromising, mitigation, or taking of remedial action measures. If the violation is a third violation, or there are multiple violations in excess of two violations, that is or are a civil penalty "minimum violation," the airport tenant shall pay to the airport operator the total costs incurred by the airport operator, including any fines or penalties imposed, in investigating, defending, compromising, mitigating, or taking of remedial measures as may be agreed to by TSA, to include but not be limited to reasonable attorney's fees and costs incurred in the investigation, defense, compromising, mitigation, or taking of remedial action measures; and, further, the airport operator shall have the right to unilaterally cancel this agreement, such cancellation to be effective thirty (30) calendar days after receipt by the airport tenant of written notice of cancellation of this agreement by the airport operator.

(2) Moderate Violation. If the violation is the first or second violation attributed to the airport tenant and is a civil penalty "moderate violation" as provided for in TSA's Enforcement Sanction Guidance Policy, the airport tenant may cure the breach by paying to the airport operator the total costs incurred by the airport operator, including any fines or penalties imposed, in investigating, defending, compromising, mitigating, or taking of remedial measures as may be agreed to by TSA, to include but not be limited to reasonable attorney's fees and costs incurred in the investigation, defense, compromising, mitigation, or taking of remedial action measures; and, further, the airport tenant may cause all of airport tenant's employees involved in the airport tenant's business operations on the airport property to undergo such security training as may be required by the airport operator. The total cost of the training shall be paid for by the airport tenant. If the violation is a third violation, or there are multiple violations in excess of two violations, that is or are a civil penalty "moderate violation," the airport tenant shall pay to the airport operator the total costs incurred by the airport operator, including any fines or penalties imposed, in investigating, defending, compromising, mitigating, or taking of remedial measures as may be agreed to by TSA, to include but not be limited to reasonable attorney's fees and costs incurred in the investigation, defense, compromising, mitigation, or taking of remedial action measures; and, further, the airport operator shall have the right to unilaterally cancel this agreement, such cancellation to be effective thirty (30) calendar days after receipt by the airport tenant of written notice of cancellation of this agreement by the airport operator.

(3) Maximum Violation. If the violation is the first violation attributed to the airport tenant and is a civil penalty "maximum violation" as provided for in TSA's Enforcement Sanction Guidance Policy, the airport tenant may cure the breach by paying to the airport operator the total costs incurred by the airport operator, including any fines and penalties imposed, in investigating, defending, compromising, mitigating, or taking of remedial measures as may be agreed to by TSA, to include but not be limited to reasonable attorney's fees and costs incurred in the investigation, defense,

compromising, mitigation, or taking of remedial action measures; and, further, the airport tenant may cause all of airport tenant's employees involved in the airport tenant's business operations on the airport property to undergo such security training as may be required by the airport operator. The total cost of the training shall be paid for by the airport tenant. If the violation is a second violation, or there are multiple violations, that is or are a civil penalty "maximum violation," the airport tenant shall pay to the airport operator the total costs incurred by the airport operator, including any fines or penalties imposed, in investigating, defending, compromising, mitigating, or taking of remedial measures as may be agreed to by TSA, to include but not be limited to reasonable attorney's fees and costs incurred in the investigation, defense, compromising, mitigation, or taking of remedial action measures; and, further, the airport operator shall have the right to unilaterally cancel this agreement, such cancellation to be effective thirty (30) calendar days after receipt by the airport tenant of written notice of cancellation of this agreement by the airport operator.

(4) Mitigation of Breach. TSA has a policy of forgoing civil penalty actions when the airport operator detects violations, promptly discloses the violations to TSA, and takes prompt corrective action to ensure that the same or similar violations do not recur. This policy is known as the TSA Voluntary Disclosure Program Policy, and is designed to encourage compliance with TSA regulations, foster secure practices, and encourage the development of internal evaluation programs. The airport tenant agrees that upon detecting a violation the airport tenant will immediately report it to the airport operator. Should the TSA ultimately determine that the violation was committed by the airport tenant, or an employee, agent, invitee, or licensee of the airport tenant, but the violation should result in the issuance of a letter of correction in lieu of a civil penalty, then the airport tenant shall reimburse the airport operator the total costs incurred by the airport operator in investigating, defending, mitigating, or taking of remedial measures as may be agreed to by TSA, to include but not be limited to reasonable attorney's fees and costs incurred in the investigation, defense, mitigation, or taking of remedial action measures. A violation resulting in the issuance of a letter of correction shall not be considered to be a breach of this agreement by the airport tenant.

(5) This subsection shall survive the cancellation or termination of this agreement, and shall be in full force and effect.

14. All other provisions of the April 10, 1998 original lease, not inconsistent herewith, shall remain in full force and effect.

IN WITNESS WHEREOF, each party has caused this Amendment to Lease Agreement to be executed by its duly authorized representative.

(SEAL)
ATTEST: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By _____
Deputy Clerk

By _____
Mayor/Chairman

ATTEST:

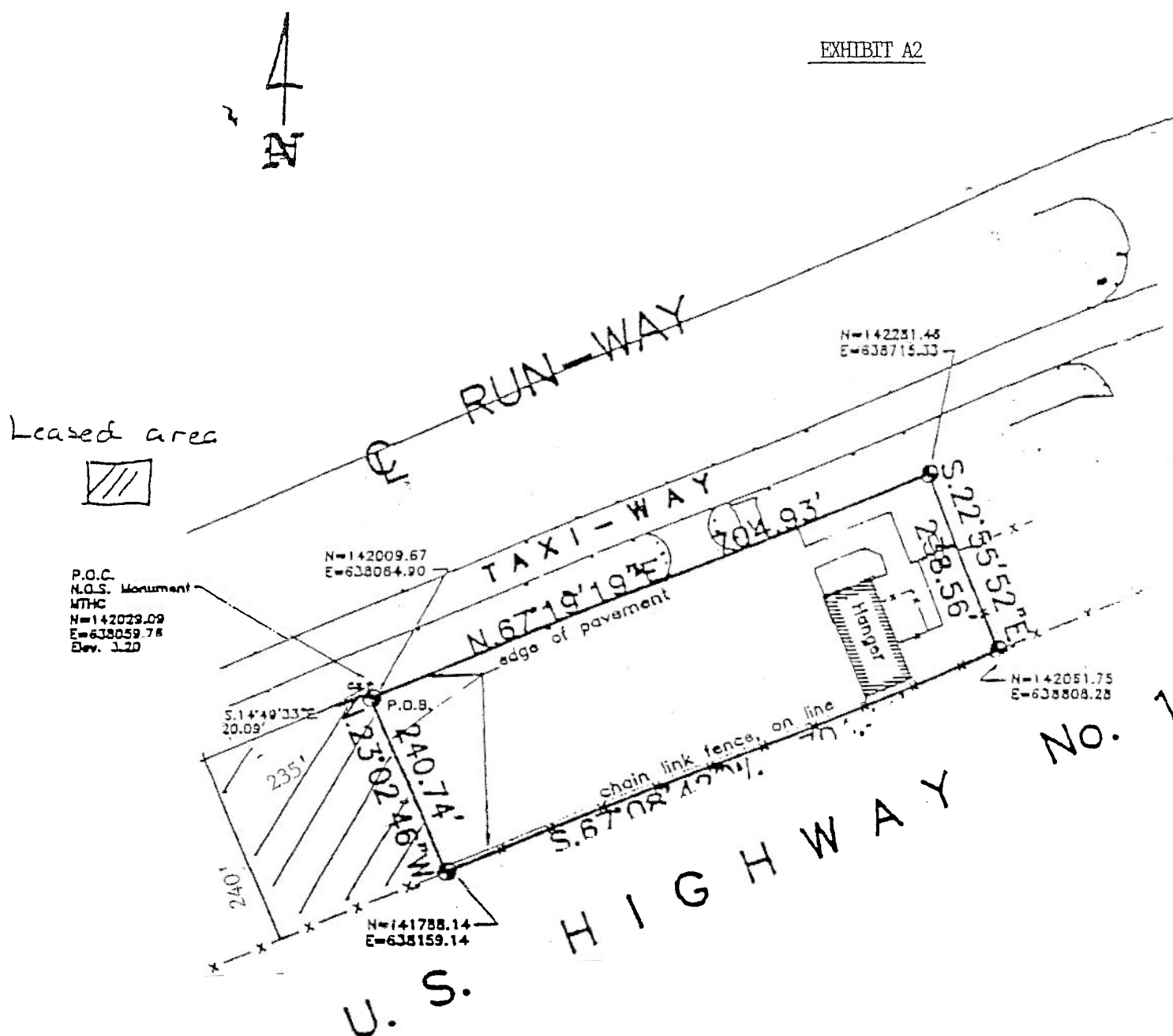
GRANTAIR SERVICES, INC.

By _____
Title _____

By [Signature]
Title President

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:

[Signature]
PEDRO J. MERCADO



SURVEYOR'S NOTES:

North arrow based on NAD 83 (1990) State Plane Coordinate System

Reference Bearing: NAD 83 (1990) State Plane Coordinate System

⊕ denotes existing elevation

Elevations based on N.G.V.D. 1929 Datum

Bench Mark No.: Elevation:

Monumentation:

- ▲ = set Spike or P.K. Nail, as noted 3.907 (destroyed)
- ⊕ = set 1/2" Iron pipe, P.L.S. No. 2749
- = found 1/2" iron pipe

Abbreviations:

Sty. = Story
 R/W = Right-of-Way
 fd. = Found
 p. = Plat
 m. = Measured
 O.R. = Official Records
 Sec. = Section
 Twp. = Township
 Rge. = Range
 N.T.S. = Not to Scale
 C. = Centerline
 Elev. = Elevation

o/h = Overhead
 u/g = Underground
 F.F.L. = Finish Floor Elevation
 conc. = concrete
 @ = Baseline
 C.B. = Concrete Block
 C.B.S. = Concrete Block Stucco
 cov'd. = Covered

□ E = Electrical Pull Box

**VEHICLE LIABILITY
INSURANCE REQUIREMENTS
FOR
CONTRACT _____**

**BETWEEN
MONROE COUNTY, FLORIDA
AND
_____**

Recognizing that the work governed by this contract requires the use of vehicles, the Contractor, prior to the commencement of work, shall obtain Vehicle Liability Insurance. Coverage shall be maintained throughout the life of the contract and include, as a minimum, liability coverage for:

- Owned, Non-Owned, and Hired Vehicles

The minimum limits acceptable shall be:

\$1,000,000 Combined Single Limit (CSL)

If split limits are provided, the minimum limits acceptable shall be:

**\$ 500,000 per Person
\$1,000,000 per Occurrence
\$ 100,000 Property Damage**

The Monroe County Board of County Commissioners shall be named as Additional Insured on all policies issued to satisfy the above requirements.

VL3

**POLLUTION LIABILITY
INSURANCE REQUIREMENTS
FOR
CONTRACT _____**

**BETWEEN
MONROE COUNTY, FLORIDA
AND
_____**

Recognizing that the work governed by this contract involves the storage, treatment, processing, or transporting of hazardous materials (as defined by the Federal Environmental Protection Agency), the Contractor shall purchase and maintain, throughout the life of the contract, Pollution Liability Insurance which will respond to bodily injury, property damage, and environmental damage caused by a pollution incident.

The minimum limits of liability shall be:

\$1,000,000 per Occurrence/\$2,000,000 Aggregate

If coverage is provided on a claims made basis, an extended claims reporting period of four (4) years will be required.

POL2

**AIRPORT LIABILITY
AND
HANGARKEEPERS LEGAL LIABILITY
INSURANCE REQUIREMENT
FOR
CONTRACT _____

BETWEEN
MONROE COUNTY, FLORIDA
AND
_____**

Recognizing that the work governed by this contract involves the repair, servicing, maintenance, fueling, or storage of aircraft, the Contractor will be required to purchase and maintain, throughout the life of the contract, Airport Liability and Hangarkeepers Legal Liability Insurance naming the Monroe County Board of County Commissioners as Additional Insured.

The minimum limits of liability shall be \$5 million.

FBO shall also purchase non-owned Aircraft Liability Insurance with minimum limits of \$5 million per occurrence.

HKL4

**AIRCRAFT LIABILITY
INSURANCE REQUIREMENTS
FOR
CONTRACT _____**

**BETWEEN
MONROE COUNTY, FLORIDA
AND
_____**

Recognizing that the work governed by this contract involves the providing of aerial services, normally classified as ultra-hazardous activities, the Contractor shall purchase and maintain, throughout the life of the contract, Aircraft Liability Insurance specifically stating that the policy will respond to crop dusting, banner towing, air shows, aerial inspection, or aerial photography, or any other activity specified in the contract.

The Monroe County Board of County Commissioners shall be named as Additional Insured.

The minimum limits of liability shall be \$5 million per occurrence.

AIR2

**WORKERS' COMPENSATION
INSURANCE REQUIREMENTS
FOR
CONTRACT**

**BETWEEN
MONROE COUNTY, FLORIDA
AND**

Prior to the commencement of work governed by this contract, the Contractor shall obtain Workers' Compensation Insurance with limits sufficient to respond to the applicable state statutes.

In addition, the Contractor shall obtain Employers' Liability Insurance with limits of not less than:

\$500,000 Bodily Injury by Accident
\$500,000 Bodily Injury by Disease, policy limits
\$500,000 Bodily Injury by Disease, each employee

Coverage shall be maintained throughout the entire term of the contract.

Coverage shall be provided by a company or companies authorized to transact business in the state of Florida.

If the Contractor has been approved by the Florida's Department of Labor, as an authorized self-insurer, the County shall recognize and honor the Contractor's status. The Contractor may be required to submit a Letter of Authorization issued by the Department of Labor and a Certificate of Insurance, providing details on the Contractor's Excess Insurance Program.

If the Contractor participates in a self-insurance fund, a Certificate of Insurance will be required. In addition, the Contractor may be required to submit updated financial statements from the fund upon request from the County.

WC2

MARATHON FIXED BASE OPERATOR (FBO) AGREEMENT

This Agreement is made and entered by Monroe County, a political subdivision of the State of Florida, whose address is Marathon Airport, 9400 Overseas Highway, Marathon Florida 33050 (hereafter County), and GRANTAIR Service, Inc., a corporation, whose address is 8800 Overseas Highway, Marathon, Florida 33050 (hereafter FBO).

WHEREAS, the County owns the Marathon Airport located in Marathon, Florida; and

WHEREAS, the FBO is a corporation in the business of providing commercial full service fixed based operations; and

WHEREAS, the County is desirous of having the FBO provide such services at the Marathon Airport;

NOW, THEREFORE, the FBO and the County agree as follows:

1) The County leases to the FBO the real property shown on Exhibit A, including the hangar building, ramp, and tiedowns, hereafter collectively referred to as the premises. Exhibit A is attached to and incorporated into this Agreement. Except as specifically provided in this Agreement, no buildings, structures, or other improvements to real property may be added to the premises by the FBO during the term(s) of this Agreement without a separate agreement concerning the same with the County.

2) The County sells and conveys title to the FBO those items of personal property listed in Exhibit B. The County warrants to the FBO that the property listed in Exhibit B is free and clear of the liens or other encumbrances of any third parties. Exhibit B is attached to and incorporated in this Agreement. The County will indemnify and hold harmless the FBO from any claims of third parties to the personal property listed in Exhibit B. The County will reimburse the FBO for any damages and expense incurred in the defense of any third party claim to such personal property, including reasonable attorneys' fees and expenses.

3) a) As an inducement for the County to enter into this Agreement, and as the purchase price for the personal property listed in Exhibit B, the FBO must pay to the County

\$150,000 prior to occupancy of the premises. The FBO may not occupy the premises until the payment is made, although the term begins to run on the effective date of this Agreement.

b) The FBO must pay monthly rent for the premises, on an arrears basis, in the amount of \$1,700 per month. The initial rent payment is due on the effective date of this Agreement and on the first of each month thereafter.

c) Starting on the date that the FBO begins the sale of fuel, the FBO must pay the County a 4 cents per gallon flowage fee for each gallon sold. By the tenth of each month the FBO must truthfully and accurately report to the County the number of gallons sold and pay the County the fee due based on that number. The County's Marathon Airport Manager, or his designee, must be allowed to inspect the FBO's records concerning fuel sales to make sure the flowage fees paid accurately reflect the number of gallons sold. The inspection(s) may only be during regular business hours (9:00 AM - 5:00 PM, Monday through Friday, excluding holidays).

d) The rent will be adjusted annually on the anniversary of the effective date of this Agreement by the amount recommended in an approved rates and charges study or by an amount reflecting the percentage increase in the CPI during the year prior to the anniversary date.

e) All payments owed by the FBO to the County that remain unpaid for more than 30 days will begin to accrue interest at a rate calculated from the original due date until the date the County actually receives the money. The interest rate is the one established by the Comptroller of the State of Florida under sec. 55.03, F.S., for the year in which the payment became overdue. The right of the County to claim interest—and the obligation of the FBO to pay it—are in addition to, and not in lieu of, any other rights and remedies the County may have under this Agreement or that are provided by law.

f) The FBO pledges and assigns to the County, the fixtures, goods, and chattels of the FBO that are brought or placed on the premises as additional security for the payment of the rent. The FBO agrees that a lien against the fixtures, goods, and chattels, may be enforced by distress foreclosure or otherwise at the election of the County, and the FBO

agrees to pay all costs and charges County incurred by the County in an enforcement action.

4) The term of this Agreement is 20 years beginning on the effective date.

5) The FBO must pay all taxes and assessments, including any sales or use tax, imposed or levied by any governmental agency with respect to the FBO's operations authorized at the Marathon Airport operations under this Agreement.

6) The FBO must obtain, in its own name, and pay for, all utility services at the premises including solid waste removal .

7) a) FBO has the right during the term(s) of this Agreement to maintain a fixed base operation and has the right to sell aircraft and aircraft engines, parts and accessories, lease aircraft storage space, operate pilot training service, provide aircraft maintenance and repair service, aircraft rental and charter flying service, and any other aeronautical service normally furnished by a fixed base operator. The FBO has the right to sell aviation gasoline and lubricants and to provide aeronautical services that are compatible with other activities on the airport. The FBO is also entitled to receive tie-down fees from aircraft parked only in the paved ramp area located within the premise's boundaries as described in Exhibit A. The FBO specifically waives any and all right to tie-down fees or any uses whatsoever of properties at the Marathon Airport located outside of the above-described premises. The FBO must refrain from either directly or indirectly being involved in any car rentals or other services that are not related specifically to fixed base aircraft operations.

b) The County's permission is not required for the repair, renovation or rehabilitation of improvements depicted on Exhibit A or for the fuel farm authorized by paragraph 8.

8) a) The FBO acknowledges and agrees that he has examined the premises, and is fully advised of their condition and location, and the limitations and restrictions placed on any building, structure or other object as to height, due to the proximity of the landing and takeoff areas of the Marathon Airport. The County warrants that all existing structures are in compliance with the height restrictions in effect on the effective date of this Agreement. If any such structures are not in compliance, the county will correct the same at its cost and

expense. The FBO agrees to abide by and observe all such restrictions and limitations, including the County fixed base operator minimum standards attached and incorporated as exhibit C, and agrees that the observance of such limitations and restrictions whether imposed by the County, state or federal governmental authority will not in anywise affect the FBO's obligations under this lease. The FBO must also comply with all laws, statutes, regulations and rules of the federal or state governments, and any plans or programs developed by or funded by either government, that affect the FBO's operations or its use of the premises. The FBO's obligation to obey federal and state laws, statutes, regulations and rules, any federal or state airport plan or airport program criteria or the criteria of a plan or program funded by the state or federal government, includes not only those in existence on the effective date of this Agreement, but those adopted after that date.

b) The FBO must construct a fuel farm on the premises within two years of the date of occupancy. Until the construction is complete, and until all governmental entities with permitting jurisdiction over the fuel farm have authorized the operation of the farm, the FBO may sell fuel from fuel trucks on premises to the extent permitted by the Airport minimum standards. The FBO is permitted to finance the construction of the fuel farm. However, during the period of financing the fuel farm is deemed by the parties to be a removable trade fixture and no lien may be placed by the seller upon County airport property. This restriction does not prohibit the filing of a UCC-1 financing statement for the purposes of the seller securing a lien against the fuel farm itself during the financing period. Upon the payment of all financing upon the fuel farm, the fuel farm becomes a permanent improvement to real property which will remain upon the premises at the expiration of this Agreement.

c) With the exception that the FBO construct a fuel farm as provided for in subparagraph 8(b), the FBO is not required to construct any new facilities upon the premises. The minimum investment requirements for the providers of aeronautical services set forth in the Airport Minimum Standards is deemed to be satisfied in full by the payments provided for under the terms of this Agreement.

d) The FBO must pay any penalty, assessment or fine of the federal or state government imposed on the County that arises out of, or is attributable to, the FBO's operations at the Marathon Airport. The FBO must also defend in the name of the County any claim, assessment or civil action that is initiated by the federal or state government against the County that is based in whole or in part on a claim that any aspect of the FBO's operations at the Marathon Airport violated a law, statute, rule, regulation, or program or project criteria.

9) The County is responsible for remedying the environmental contamination described in Exhibit D. The FBO agrees to admit County employees or contractors to the premises at reasonable times for the purpose of remedying contamination. Otherwise, the FBO accepts the premises in the condition that they are in at the beginning of this agreement. The FBO must keep the premises in good order and condition. The FBO must promptly repair any damage to the premises and is responsible for remedying any environmental contamination caused by the FBO's operations at the premises. At the end of the term(s) of this Agreement, the FBO must peacefully surrender the premises to the County in good order and condition, normal wear and tear excepted. If no rent or fees are due the County, at the end of the term(s) of this Agreement the FBO may also remove its personal property from the premises and may remove any trade fixtures provided that the FBO restores the premises to their original condition. If during the term of this Agreement the FBO fails to keep the premises in the good repair and free from environmental contamination as required by this subparagraph, the County may, after providing the FBO with a written warning and a fifteen day opportunity to correct the deficiency, enter the premises and do whatever repair or clean up work the County's Marathon Airport Manager deems appropriate. The cost of the work plus 10% will be added to the FBO's rent for the month following the repair or clean-up.

10) The FBO is liable for and must fully defend, release, discharge, indemnify and hold harmless the County, the members of the County Commission, County officers and employees, and County agents and contractors, from and against any and all claims, demands, causes of action, losses, costs and expenses of whatever type - including investigation and witness costs and expenses and attorneys' fees and costs - that arise out of or are attributable to the FBO's operations at the

Marathon Airport, excluding those claims, demands, damages, liabilities, actions, causes of action, losses, costs and expenses that are the result of the sole negligence of the County or other Airport tenant of the County. The FBO's purchase of the insurance required in paragraph 12 and Exhibit D does not release or violate the FBO's obligations under this paragraph.

11) It is understood and agreed that nothing contained in this Agreement may be construed to grant or authorize the granting of an exclusive right within the meaning of the Federal aviation Act or its successor and that the County may enter into agreements with other fixed base operators as long as such agreements are not on more favorable terms than this Agreement.

12) a) Regardless of the effective date of this Agreement, before the FBO may occupy the premises it must obtain insurance in the amounts, terms and conditions described in Exhibit E. Exhibit E is attached and made a part of this Agreement.

b) The FBO must keep in full force and effect the insurance described in Exhibit E during the term(s) of this Agreement. The FBO is not required to purchase windstorm or flood insurance for any structure on the premises. If the insurance policies originally purchased which meet the requirements of Exhibit E are canceled, terminated or reduced in coverage, then the FBO must immediately substitute complying policies so that no gap in coverage occurs.

c) The insurance required of the FBO in this paragraph is for the protection of the County, its property and employees, and the general public. The insurance requirement is not, however, for the protection of any specific member of the general public who might be injured because of an act or omission of the FBO. The insurance requirements of this paragraph do not make any specific injured member of the general public a third party beneficiary under this Agreement. Therefore, any failure by the County to enforce this paragraph, or evict the FBO from the Marathon Airport if the FBO becomes uninsured or underinsured, is not the breach of any duty or obligation owed to any specific member of the general public and cannot form the basis of any County liability to a specific member of the general public or his/her dependents, or estate or heirs.

13) The FBO may not cause, suffer or permit any lien, mortgage, security interest, financing statement or other encumbrance to be placed on any real property, fixture or improvement to real property owned by the County and leased to the FBO under this Agreement. If any of the encumbrances just described are filed or perfected against any such property of the County, or to property that will belong to the County upon termination, then the FBO must promptly cause the discharge, release or otherwise clear and remove such encumbrances from that property.

14) a) The County must keep the Marathon Airport runway, taxiway, and the area immediately adjacent to the runway and taxiway, in good repair and clear of obstructions and debris. The County must maintain and operate the Marathon Airport according to the highest standards or ratings issued by the FAA for airports similar in size and character to the Marathon Airport. The County must also comply with the rules and regulations of any other government agency that has, or may have, jurisdiction over the Marathon Airport.

b) The County will provide, and maintain in an existing state of good repair, ingress and egress to the premises for FBO employees, customers, guests, and suppliers.

15) The FBO for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that

a) No person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits or, or be otherwise subjected to discrimination in the use of said facilities.

b) That in the construction of any improvements on, over or under such land and the furnishing or services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination.

c) That the FBO shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended. That in the event of breach

of any of the above nondiscrimination covenants, the County shall have the right to terminate the lease and to re-enter and as if said lease had never been made or issued. The provisions shall not be effective until the procedures of title 47, Code of Federal Regulations, Part 21 are followed and completed including exercise or expiration of appeal rights.

16) It shall be a condition of this lease, that the County reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the real property hereinafter described, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from or operating on the airport. That the FBO expressly agrees for itself, its successors and assign, to restrict the height of structures, objects of natural growth and other obstructions on the hereinafter described real property to such a height so as to comply with Federal Aviation Regulations Part 77. That the FBO expressly agrees for itself, its successors and assigns, to prevent any use of the hereinafter described real property which would interfere with or adversely affect the operation or maintenance of the airport, or otherwise constitute an airport hazard.

17) This Fixed Base Operator Agreement and all provisions hereof are subject and subordinate to the terms and conditions of the instruments and documents under which the County acquired the subject property from the USA and shall be given only such effect as will not conflict or be inconsistent with the terms and conditions contained in the lease of said lands from the County and any existing or subsequent amendments thereto.

18) If funds are not provided by the United States for the operation of a Marathon Airport control tower, navigation aids or other facilities that may be needed by the FBO for service at the Airport, the County is under no obligation to provide those facilities or services.

19) a) The County may treat the FBO in default and terminate this Agreement if the FBO fails to timely submit the payments required of it under paragraph 3. Before the County may terminate the Agreement under this subparagraph the County must give the FBO written notice of the default stating that, if the default is not cured within 15 days of the FBO's receipt of the written notice, then the County will terminate this Agreement.

b) The County may treat the FBO in default and terminate this Agreement if the FBO does not begin fixed base operator service and have the insurance required by Exhibit E within 30 days of the effective date of this Agreement. Before the County may terminate the Agreement under this subparagraph, the County must give the FBO a written notice of the default stating that, if operations do not commence and the required insurance is not obtained within 15 days of the FBO's receipt of the notice, then the County will terminate this Agreement.

c) The County may treat the FBO in default and terminate this Agreement if the FBO, after starting fixed base operator service at the Marathon Airport, fails to keep in full force and effect the insurance required by paragraph 12 and Exhibit E. Before treating the FBO in default and terminating the Agreement under this subparagraph, the County need only provide the FBO 48 hour notice by FAX or overnight courier. The County may, but need not, provide the FBO with an opportunity to cure the default.

d) The termination of this Agreement under subparagraphs 19(a)-(c) does not relieve the FBO from an obligation to pay whatever damage the County suffered because of the FBO's default.

e) The County may also treat the FBO in default and terminate this Agreement if the FBO fails to comply with its other obligations under this Agreement (the obligations besides the payment of rents and fees when due, and the purchase of insurance and keeping it in effect.) Before the County may terminate the Agreement under this subparagraph, the County must give the FBO a written notice of the default stating that, if the default is not cured within 15 days of the FBO's receipt of the written notice, then the County will terminate this Agreement. Termination under this subparagraph does not relieve the FBO from an obligation to pay the County whatever damages the County suffered because of the FBO's default.

f) Despite the FBO timely cure of its acts of default or the County's waiver of acts of default, if the FBO commits a material breach three times or more in performing its obligations under this Agreement during a calendar year, then the County may, in its discretion,

determine that the FBO is a habitual violator. When the County makes that determination, it must notify the FBO in writing. The notice must explain why the FBO was determined to be a habitual violator and that any future act of default will be noncurable will not be waived, and will be the basis for the immediate termination of this Agreement. If a subsequent default occurs, the County may terminate this Agreement by giving the FBO 15 days written notice. The FBO must pay the County whatever rent and fees are due as of the date of termination. The FBO will then have no further rights under this Agreement. Termination under this subparagraph does not relieve the FBO from an obligation to pay the County any damage suffered because of the FBO's final act of default.

20) The FBO may terminate this Agreement in its discretion - if it is not in default in paying the rents and fees owed to the County - by giving the County 15 days written notice, upon the occurrence of any of the following events:

a) The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Marathon Airport, or any part of the Airport, for a period of at least 90 days.

b) The lawful assumption by the United States of the operation, control or use of the Marathon Airport, or any part of the Airport, in a way that prevents the FBO from operating its fixed base operation for a period of at least 90 days.

c) The inability of the FBO to use the Marathon Airport for at least 90 days because of fire, explosion, earthquake, hurricane, other casualty, or acts of God or the public enemy.

d) The FAA's failure to grant the FBO the license(s) necessary to operate its service.

e) A dispute maintained in good faith by the County with another governmental agency other governmental agencies that make it difficult or impossible for the Marathon Airport to be operated safely for a period of at least 90 days.

f) The FBO hangar is destroyed and the County has not begun a good faith effort to begin the repair or reconstruction of the hangar within 60 days of the date of destruction.

The grounds for the FBO's termination of this Agreement as stated in subparagraphs 20(a) - (f) create no basis for any County liability to the FBO and cannot serve to create any obligation on the part of the County to pay money to the FBO.

21) The FBO may terminate this Agreement and treat the County in default if the County fails to perform its obligations under this Agreement and the failure is not due to the reasons described in subparagraph 20(a)-(e). Before the FBO may terminate the Agreement under this paragraph, the FBO must give the County a written notice of the default stating that, if the default is not cured within 15 days of the FBO's written notice, then the FBO will terminate this Agreement. Termination under this paragraph does not relieve the County from an obligation to pay the FBO whatever damages the FBO suffered because of the County's default.

22) The waiver by the FBO or the County of an act or omission that constitutes a default of an obligation under this Agreement does not waive another default of that or any other obligation.

23) The FBO may not assign this Agreement or assign or subcontract any of its obligations under this Agreement without the approval of the County's Board of County Commissioners, which consent may not be unreasonably withheld.

24) All the obligations of this Agreement will extend to and bind the legal representatives, successors and assigns of the FBO and the County.

25) During the term of this Agreement, the FBO must have and maintain a registered agent as required by Chap. 620, F.S., and keep the County informed of the agent's name, title and address.

26) This Agreement is governed by the laws of the State of Florida and the United States. Venue for any dispute arising under this Agreement must be in Monroe County, FL. In the event of any litigation, the prevailing party is entitled to a reasonable fair market value attorney fees and costs.

27) This Agreement has been carefully reviewed by the FBO and the County. Therefore, this Agreement is not to be construed against any party on the basis of authorship.

28) Notices to the County provided for in this Agreement, unless otherwise specified, must be sent by certified mail to:

Marathon Airport Manager
9400 Overseas Highway
Marathon, FL 33050

Notices to the FBO provided for in this Agreement, unless otherwise specified, must be sent by certified mail to:

GRANTAIR Service, Inc.
8800 Overseas Highway
Marathon, Florida 33050

29) This Agreement is the parties' final mutual understanding. It replaces any earlier agreements or understandings, whether written or oral. This Agreement cannot be modified or replaced except by another written and signed agreement.

30) This Agreement will take effect on April 10, 1998

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative.

(SEAL)
ATTEST: DANNY L. KOLHAGE, CLERK

By *Robert J. Jantzen*
Deputy Clerk

ATTEST:

By _____
Title _____

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By *Robert J. Jantzen*
Mayor/Chairman

GRANTAIR Services, Inc.

By *Robert N. Wolep*
Title PRESIDENT

jairgrantair

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY.
BY *Robert N. Wolep*
ROBERT N. WOLEP
DATE 4-14-98